THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAROLINE WILMUTH, KATHERINE SCHOMER, and ERIN COMBS, on behalf of themselves and all others similarly situated, Plaintiffs, v. AMAZON.COM, INC., Defendant.	Case No. 2:23-cv-01774-JNW **DEFENDANT'S MOTION TO DISMISS AND/OR STRIKE** NOTE ON MOTION CALENDAR: FRIDAY, FEBRUARY 16, 2024 ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Plaintiffs Caroline Wilmuth, Katherine Schomer, and Erin Combs (together, "Plaintiffs") worked for Amazon on the same 14-person team at Amazon headquarters ("HQ1") in Seattle. Wilmuth and Schomer allege they were paid less than male members of that team, while Combs alleges that she was paid less than unspecified "male peers." Compl. ¶¶ 68, 72-73, 79. Combs and Wilmuth claim that a male leader of a similar team, Jordan Burke, discriminated against them due to their gender. *Id.* ¶ 88. Plaintiffs also allege that they were retaliated against after raising concerns about their pay and for taking medical leave. *Id.* ¶¶ 125-62. In their seven-count Complaint, Plaintiffs assert that Amazon discriminated and retaliated against them in violation of the Washington Law Against Discrimination ("WLAD") (Counts I and VI), the Washington Equal Pay and Opportunities Act ("EPOA") (Counts II and V), and the federal Equal Pay Act ("EPA") (Counts III and IV); they also allege that Amazon violated the Family and Medical Leave Act ("FMLA") and the Washington Paid Family Medical Act ("WPFMLA") (Count VII).

Despite the individualized nature of their claims, Plaintiffs seek to bring WLAD and EPOA claims on behalf of a class, and an EPA claim on behalf of a collective; that class and collective is defined to include *all* female Amazon employees nationwide who worked for Amazon in *any* job that was "levels 4-8" for the three years preceding the filing of the Complaint through "the resolution of this action." Compl. ¶¶ 32, 42. In other words, three female employees who worked in a single, 14-person group at Amazon HQ1 seek to represent *all* female Amazon employees nationwide who worked in *any* location, in *any* position (at levels 4-8), in *any* business unit, for *any* supervisor. Given that Amazon has approximately 350,000 management, sales, and administrative employees in the U.S. and roughly 33.5% of those employees are women, Plaintiffs seek to represent a class and collective of likely more than 100,000 individuals.[1]

[1] *See* Amazon EEO-1 Consolidated Report (2021), available at https://www.aboutamazon.com/news/workplace/our-workforce-data. The Court can take judicial notice of information in Amazon's EEO-1 report. *See Boilermakers Nat. Annuity Tr. Fund v. WaMu Mortg. Pass Through Certificates, Series AR1*, 748 F. Supp. 2d 1246, 1252 (W.D. Wash. 2010).

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These class and collective claims must be stricken under Rule 12(f) for at least four reasons. *First*, Plaintiffs cannot bring WLAD and EPOA class claims under Washington law on behalf of employees who never lived or worked in Washington. *Second*, Plaintiffs' WLAD and EPOA class claims cannot possibly satisfy Rule 23's adequacy, commonality, predominance, or manageability requirements, which justifies striking the class allegations now. *Third*, Plaintiffs cannot bring nationwide collective or class claims under the EPA or EPOA because such actions are limited to employees within a single establishment (*i.e.*, location), and Plaintiffs do not meet the "unusual circumstances" that justify an exception to that rule. *Fourth*, Plaintiffs cannot assert EPA claims on behalf of a nationwide collective because women working for Amazon in different roles, in different business units, in different states, and for different supervisors are not "similarly situated" under the EPA. At bottom, Plaintiffs cannot bring sweeping nationwide class and collective claims because Plaintiffs and the employees they seek to represent "have little in common but their sex and this lawsuit." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011).

In addition, several of Plaintiffs' individual claims merit dismissal under Rule 12(b)(6). Specifically, Plaintiffs' Count VII FMLA and WPFMLA claims must be dismissed because Plaintiffs fail to allege that they were eligible for, requested, complied with the requirements for taking, or actually took protected leave under either the FMLA or the WPFMLA. And Combs's claims under the WLAD, EPOA, and EPA (Counts I, II, and III) must be dismissed because she fails to adequately allege facts to show that she suffered actionable disparate treatment or that any similarly situated male was paid more than she was.

For these reasons, the Court should strike Plaintiffs' Count I, II, and III class and collective action claims; dismiss Count VII in its entirety; and dismiss Counts I, II, and III as to Combs.

II. BACKGROUND[2]

Plaintiffs Caroline Wilmuth, Katherine Schomer, and Erin Combs all worked for Amazon on the same team, in the same job level (L7), in the same organization, at Amazon headquarters in

[2] Amazon accepts as true the factual allegations in Plaintiffs' Complaint solely for purposes of this Motion.

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Seattle—also known as HQ1.[3] Compl. ¶¶ 54, 62, 64. Plaintiffs' team, the Global Corporate Affairs Research & Strategy Team ("GCARS"), is contained within Amazon's larger Worldwide Communications organization ("WWC"), which is itself part of Amazon Global Corporate Affairs ("GCA"). *Id.* ¶¶ 53-55. Plaintiffs allege that Wilmuth created GCARS in 2019, and that Combs and Schomer reported to Wilmuth after joining the team in 2022. *Id.*

Plaintiffs allege that Amazon maintains a common salary structure for all of its salaried employees, placing each in a level from 4 (L4) to 12 (L12). Compl. ¶¶ 23, 54, 62, 64. Amazon assigns every employee a "job code[]" which, when combined with that employee's level, determines a range of possible compensation. *Id.* ¶¶ 24-25. Allegedly, Amazon regularly assigns women to lower job codes than comparable men, fails to advance women to higher job codes, and pays men more than women even in the same job code. *Id.* ¶¶ 28-30.

Plaintiffs cite their own experiences as "illustrative" of a supposedly widespread practice of nationwide gender discrimination. Compl. ¶ 52. Despite the fact that Wilmuth was hired to serve as a "General Marketing Manager," *id.* ¶ 53, she alleges that her work at Amazon was akin to that of a research scientist and that she was incorrectly coded in an L7 marketing role instead of in a "research job category," *id.* ¶¶ 66-67. Because she was classified as a marketing manager, Wilmuth claims that she was paid less than male research scientists on her team as well as Jordan Burke, an L8 male, who led a different team and reported to the same supervisor as Wilmuth—Christina Lee. *Id.* ¶¶ 68-69. Schomer, an L7, was hired as a "Principal Product Manager" but like Wilmuth, claims she should have been classified as a research scientist instead. *Id.* ¶¶ 72-73. Schomer alleges that she was paid less than two men, Pushkar Raj and Gouri Mishra, who supposedly performed the same work that she did but were research scientists. *Id.* ¶¶ 72-75.

[3] While Plaintiffs name Amazon.com, Inc. as the defendant, they were, in fact, employed by Amazon.com Services LLC. The arguments in this Motion are being made on behalf of Amazon.com Services LLC, and Amazon.com Services LLC in no way concedes that Amazon.com, Inc. is a proper defendant. Amazon.com Services LLC requests that Plaintiffs correct the case caption of their Complaint to identify the appropriate Amazon entity.

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Combs, also an L7, alleges that she worked as a Brand and Marketing Strategist and was paid "at the very low end of the pay band for her role," and "less than" unidentified "male peers." *Id.* ¶ 79.

Plaintiffs Wilmuth and Combs (but not Schomer) allege that Burke "discriminated" against them due to their gender by questioning their experience, marginalizing their work, and speaking to them in an unprofessional manner. Compl. ¶ 81. Wilmuth and Combs allege that Burke also began taking credit for their work starting in July 2022. *Id.* ¶ 82. Wilmuth and Combs do not identify any alleged gender-based comments that they claim Burke made. Plaintiffs likewise identify no instances in which Burke provided similarly situated male employees with more favorable treatment; instead, Plaintiffs suggest that Burke's alleged mistreatment was gender-motivated because other, unidentified "[w]omen on Mr. Burke's team have also reported having their expertise minimized and their feedback ignored." *Id.* ¶ 88.

All three Plaintiffs allege they complained about this perceived discrimination. *See* Compl. ¶¶ 92, 95, 99, 107, 109-115, 118-124. Plaintiffs allege that Amazon retaliated against them for their complaints. Wilmuth alleges that her promotion to an L8 Director position was "put on hold" two days after she complained about Burke's conduct. *Id.* ¶¶ 97-98. Wilmuth also claims that, in December 2022, Amazon "remov[ed] her entire 14-person team and all of her projects from under her purview," moving her to an "Individual Contributor role." *Id.* ¶ 125. As part of the reorganization, Schomer was moved to Burke's team and was no longer responsible for supervising two of her three direct reports. *Id.* ¶ 131. Combs began reporting to a new supervisor, and her two direct reports were reassigned. *Id.* ¶¶ 133-135.

Plaintiffs allege that their "mental and physical health suffered," and that they all took "medical leave" in 2023. Compl. ¶ 145. Plaintiffs do not allege what medical conditions they had or what type of leave they requested or were granted. However, they allege that "Amazon HR" shared confidential information about one of Wilmuth's "protected complaints" with her co-workers while she was on leave. *Id.* ¶¶ 147-48. After returning from leave, Schomer allegedly was "provided . . . with a list of purported performance issues that had never been mentioned to

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her before." *Id.* ¶ 152. Combs, upon returning from leave, was supposedly "further demoted" and "placed . . . in a role in which she is set up to fail." *Id.* ¶¶ 157-58.

Plaintiffs bring a seven-count Complaint on behalf of themselves and a putative class and collective. Despite the fact that Plaintiffs were each L7s in marketing-related functions on a single, 14-person GCARS team at Amazon HQ1, they assert claims on behalf of "all women who worked for Amazon in a Covered Position [all positions in job levels 4-8] at any time from three years before the filing of the initial complaint through the resolution of this action." Compl. ¶¶ 32, 42.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 12(f) permits a court to strike from a pleading "any redundant, immaterial, impertinent, or scandalous matter." Where, as here, "the complaint demonstrates that a class action cannot be maintained," it is appropriate for the court to "strike class allegations prior to discovery." *Patrick v. Ramsey*, 2023 WL 6680913, at *2 (W.D. Wash. Oct. 12, 2023) (cleaned up); *see also* 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1383 (3d Ed.) (motion to strike class allegations "is appropriate because overbroad or unsupportable class allegations bring 'impertinent' material into the pleading"); *Pytelewski v. Costco*, 2010 WL 11442901, at *3 (S.D. Cal. July 14, 2010) (analyzing motion to strike collective claims under Rule 12(f)). In considering a motion to strike under Rule 12(f), courts apply a similar standard to a motion to dismiss. *Cashatt v. Ford Motor Co.*, 2020 WL 1987077, at *4 (W.D. Wash. Apr. 27, 2020). Striking class allegations at the pleading stage provides the benefit of avoiding "expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Id.*

To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). This "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned up). Thus, while the Court must accept "all well-pleaded factual

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allegations in the complaint as true," the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Keats v. Koile*, 883 F.3d 1228, 1234, 1243 (9th Cir. 2018).

IV. ARGUMENT

A. The Court Should Strike Plaintiffs' Class Allegations In Support Of Their WLAD (Count I) And EPOA (Count II) Claims.

Plaintiffs bring putative class claims for gender discrimination and unequal pay in violation of the WLAD (Count I) and the EPOA (Count II), seeking injunctive relief under Rule 23(b)(2) and damages under Rule 23(b)(3). *See* Compl. ¶¶ 163-72. These claims should be stricken because: (1) Plaintiffs may not assert Washington state-law claims on behalf of a nationwide class; (2) Plaintiffs fail to satisfy Rule 23(a)'s commonality and adequacy requirements; and (3) Plaintiffs' damages class fails to satisfy Rule 23(b)(3)'s predominance and manageability requirements.

1. Plaintiffs Improperly Assert Claims Under Washington Law On Behalf Of A Nationwide Class.

As a threshold matter, Plaintiffs' class allegations must be stricken because Plaintiffs purport to assert WLAD and EPOA claims on behalf of a nationwide class, regardless of whether those putative class members have any connection to Washington. This proposed application of Washington law is both unconstitutional and inconsistent with Washington's choice-of-law rules.

a. Applying Washington Law To Putative Class Members Who Never Lived Or Worked In Washington Would Be Unconstitutional.

If the WLAD and EPOA were applied to class members who lived and worked exclusively in other states, that application would violate the federal Constitution. "No State can legislate except with reference to its own jurisdiction[.]" *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996). Accordingly, under basic principles of federalism, "[i]t would be impossible to permit the statutes of [Washington] to operate beyond the jurisdiction of that State[.]" *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003). In addition, "the Commerce Clause precludes the application of a state statute to commerce that takes place wholly outside of the State's borders,

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whether or not the commerce has effects within the State." *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) (cleaned up). And the question of whether a statute impermissibly regulates commerce in other states depends not only on the "consequences of the statute itself, but also [on] how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation." *Id.*

By seeking to represent a *nationwide* class in the pursuit of claims under the WLAD and the EPOA, Plaintiffs seek to apply those statutes to employees who lived and worked entirely outside of Washington. This "would essentially be [a] finding that [Washington]'s laws applied across the country," which is "plainly impermissible." *Moss v. Loandepot.com, LLC*, 2020 WL 1508504, at *4 (E.D. Mich. Mar. 30, 2020). Indeed, the Washington Supreme Court has recognized it would be inappropriate to "apply the state law to transactions completely unrelated to Washington." *Bostain v. Food Exp., Inc.*, 153 P.3d 846, 856 (Wash. 2007) (cleaned up).

Applying the WLAD and EPOA beyond state lines also would interfere "with the legitimate regulatory regimes of other States." *Healy*, 491 U.S. at 336. If Washington were to attempt to apply its laws to employees who lived and worked exclusively outside Washington (or to employees who only rarely work in Washington), any other state in which Amazon operates could attempt to apply its employment laws to Amazon's employees who lack a substantial relationship to the state. That would subject nationwide employers like Amazon operating in interstate commerce to an overlapping and inconsistent patchwork of different states' laws. That is precisely the harm that the dormant Commerce Clause prohibits. *See Healy*, 491 U.S. at 340.

Applying Washington law to out-of-state class members also would present serious due process concerns. For a state's laws to be applied to the claims of each class member, the state must have "a significant contact or significant aggregation of contacts to the claims asserted by each member of the plaintiff class." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985) (cleaned up). Applying Washington law to claims "unrelated to that state"—*i.e.*, to employees

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who do not live or work in Washington—would be "sufficiently arbitrary and unfair as to exceed constitutional limits." *Id.* at 822.

b. The WLAD And EPOA Do Not Apply To All Putative Class Members Under Washington Choice-Of-Law Principles.

Consistent with the constitutional strictures on extraterritorial application of Washington law, the WLAD and EPOA do not apply to out-of-state class members under the state's choice-of-law rules. In determining the state law applicable to class claims, a federal court must "utilize the choice-of-law rules of the forum state." *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 928 (9th Cir. 2019). Washington requires a two-step approach to conflict-of-laws issues. *Sanders v. W. Express, Inc.*, 2022 WL 1800778, at *5 (E.D. Wash. June 1, 2022). First, a court must determine whether there is an "actual conflict between the laws or interests of Washington and the laws or interests of another state[.]" *Seizer v. Sessions*, 940 P.2d 261, 264 (Wash. Ct. App. 1997). Second, if there is a conflict, the applicable law is decided by determining which jurisdiction has the "most significant relationship" to the dispute. *Burnside v. Simpson Paper Co.*, 864 P.2d 937, 940-41 (Wash. 1994).

Here, there are conflicts between Washington law and many putative class members' home-state laws. For example, the WLAD does not require the exhaustion of administrative remedies, while numerous state laws do require exhaustion. *See, e.g.*, *Guillot v. Potlatch Corp.*, 2005 WL 8164962, at *4 (E.D. Wash. Feb. 10, 2005). Still other states have different limitations periods than those of the WLAD and EPOA. *Compare* RCW 4.16.080(2) (civil action must be filed within 3 years of violation under WLAD) and RCW 49.58.070(1) (same under EPOA), *with, e.g.*, N.Y. Lab. Law §§ 194, 198(3) (six-year limitations period for New York equal pay law); Tenn. Code Ann. § 50-2-205 (two-year limitations period under Tennessee Equal Pay Act). And some state statutes include state-specific requirements that are irreconcilable with Washington law. *See, e.g.*, Miss. Code Ann. § 71-17-7(2) (requiring plaintiffs to "first waive any right to relief" under the EPA to pursue claims under Mississippi's 2022 Equal Pay for Equal Work Act).

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In light of these conflicts, the Court would be required to analyze which state's law should be applied to each individual class member's claims. In most cases, class members' home-state laws would apply. For employees who worked for Amazon entirely in other states, Washington does not have *any* relationship to those employees' employment—much less the "most significant relationship"—making application of Washington law to those employees' claims "inappropriate." *Lee v. ITT Corp.*, 275 F.R.D. 318, 324 (W.D. Wash. 2011); *see also Senne*, 934 F.3d at 932 (explaining that the law of the state where the work is performed usually applies).

Because Plaintiffs cannot assert Washington state-law claims on behalf of employees who never lived or worked in Washington, their WLAD and EPOA class claims must be stricken. *See Goins v. United Parcel Service Inc.*, 2023 WL 3047388, at *15 (N.D. Cal. Apr. 20, 2023) (striking class claims where plaintiffs "fail[ed] to address how they can bring class-wide claims under California's FEHA and CEPA for out-of-state employees").[4]

2. Plaintiffs Cannot Adequately Represent The Putative Class.

Plaintiffs' class claims also must be stricken because they fail to meet Rule 23's requirement that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). A putative class fails Rule 23(a)(4)'s adequacy requirement if there is a conflict of interest between class representatives and members of the putative class. *Donaldson v. Microsoft Corp.*, 205 F.R.D. 558, 568 (W.D. Wash. 2001). Such a conflict may arise "where a class contains both supervisory and non-supervisory employees" because supervisors may be required to "implement" the very policies challenged by non-supervisory class members. *Id.*; *see also Wagner v. Taylor*, 836 F.2d 578, 595 (D.C. Cir. 1987).

Here, Plaintiffs cannot represent *all* female L4s-L8s nationwide because that class includes both non-supervisory employees and supervisory employees. Many class members report to other

[4] Even if Plaintiffs amended their Complaint to include nationwide class claims under the applicable laws of all states, they would be unable to satisfy Rule 23(b)(3)'s predominance requirement because individualized issues of state law would present an "insuperable obstacle" to class certification. *Duncan v. Northwest Airlines, Inc.*, 203 F.R.D. 601, 611-12 (W.D. Wash. 2011); *see also Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (plaintiff failed to satisfy predominance requirement in asserting claims under 48 states' laws). ‼

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class members. *See, e.g.*, Compl. ¶¶ 87, 112, 138. Indeed, two of the three named Plaintiffs (Schomer and Combs) reported to the third named Plaintiff (Wilmuth), and all three supervised other employees. *See id*. ¶¶ 131, 133, 138. Further, the very discriminatory practices about which Plaintiffs complain are "implemented" by supervisors who are themselves members of the putative class. *Donaldson*, 205 F.R.D. at 568. Plaintiffs allege that Amazon's employment practices, "including in hiring, assigning job codes and job levels, setting initial salary and other aspects of compensation, measuring performance, determining bonuses, equity awards, and raises, and awarding promotions" result in underpayment of female employees. Compl. ¶ 6. Unquestionably, female supervisory employees play a central role in implementing these practices. *See, e.g.*, *id* ¶ 98 (alleging that Lee, Wilmuth's supervisor, informed her that her promotion was "on hold"); *id.* ¶¶ 150, 154 (describing reviews of Schomer and Combs by their supervisors that would "negatively impact [their] compensation"). Because Plaintiffs seek to represent some of the very same individuals who they allege engaged in misconduct, Plaintiffs' putative class presents "insurmountable" conflicts. *Donaldson*, 205 F.R.D. at 568; *see also Wagner*, 836 F.2d at 595. !

Plaintiffs cannot defuse these conflicts by pointing to abstract Amazon "policies" or "practices" that they claim are discriminatory against both supervisory and non-supervisory employees alike. *See* Compl. ¶¶ 5-6. Plaintiffs do *not* allege that Amazon's practice of merely having job codes, levels, performance reviews, or promotions is discriminatory *per se*. Rather, Plaintiffs allege that these practices are discriminatory in practice because certain *individual* supervisors at Amazon have implemented them unfairly by, for example, "assign[ing]" women to lower levels and paying women less than men within the same codes. *See id*. ¶¶ 21-31. Thus, under Plaintiffs' own theory, determining whether a class member suffered discrimination "would require individualized assessments into the circumstances of each class member[] . . .—and thus into the actions of supervisors." *Delgado v. Marketsource, Inc.*, 2018 WL 6706041, at *8 (N.D. Cal. Dec. 20, 2018). As a result, the putative class fails to satisfy Rule 23's adequacy requirement.

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3. Plaintiffs' Putative Class Lacks Commonality.

Plaintiffs' class allegations also should be stricken because they fail to satisfy Rule 23's commonality requirement. Under Rule 23(a)(2), a class action may only be maintained where "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "A common question must be capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 663 (9th Cir. 2022) (en banc) (cleaned up). What matters "is not the raising of common questions—even in droves—but rather, the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 350 (cleaned up).

Despite acknowledging that "Amazon is one of the largest companies currently operating in the technology industry," Plaintiffs assert class claims on behalf of "all women who worked for Amazon" in "job levels 4-8" at "any time from three years before the filing of the initial complaint through the resolution of this action." Compl. ¶ 48. Plaintiffs do not limit their claims to employees in any specific type of job, role, team, business unit, or location. *Id.* ¶ 55. Instead, they "wish to sue about literally millions of employment decisions at once." *Dukes*, 564 U.S. at 352.

To support this breathtakingly broad nationwide class, Plaintiffs rest on the thin reed of their *three* allegedly "illustrative" experiences, almost all of which relate to Wilmuth's "team of 14 people." Compl. ¶¶ 52, 55. The localized and idiosyncratic nature of Plaintiffs' claims leaps from the more than 20 pages and 110 paragraphs of the Complaint devoted to "individual plaintiff factual allegations." *Id.* ¶¶ 32-162. For example, Wilmuth alleges she was classified as a lower-paid "General Marketing Manager" instead of in a higher-paid "research job category," "despite her exclusively performing a research role." *Id.* ¶¶ 66-67. Adjudication of this claim would require determination of what, precisely, Wilmuth's job duties were; whether she was misclassified in the incorrect job code or level (and if so, by whom and when); whether she, in fact, performed research more akin to a job in the "research job category"; and if so, whether

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Wilmuth's misclassification had anything to do with her gender. It is difficult to imagine more individualized questions—or how answering them would resolve questions applicable to other class members' claims "in one stroke." *Olean*, 31 F.4th at 663.

Even the three Plaintiffs' claims differ from those asserted by the other Plaintiffs: Burke allegedly discriminated against Wilmuth and Combs, but not Schomer. Compl. ¶¶ 80-91. Wilmuth and Schomer believe their job codes were incorrect, but Combs does not dispute hers was appropriate, asserting only (without supporting facts) that she should have been paid more *within* her job code. *Id.* ¶¶ 66, 72, 79. Wilmuth, but not the other Plaintiffs, alleges that she should have been promoted were it not for "gendered" criticism that her management style was "too aggressive." *Id.* ¶ 99.

And of course, Plaintiffs cannot explain how their claims share common questions with those of the *more than one hundred thousand* class members whom they seek to represent. Members of Plaintiffs' sweeping class would necessarily "h[o]ld a multitude of jobs, at different levels of [Amazon's] hierarchy, for variable lengths of time, . . . sprinkled across 50 states, with a kaleidoscope of supervisors (male and female)." *Dukes*, 564 U.S. at 359. Assessing whether any class member suffered discrimination would require an individualized analysis of her treatment by her supervisor, her job code classification, any alleged comparators, and whether her "L" level was commensurate with her job. Inevitably, "it would be impossible for all of the contributing factors to produce a common question to the crucial question why [she] was . . . disfavored." *Kevari v. Scottrade, Inc.*, 2018 WL 6136822, at *7 (C.D. Cal. Aug. 31, 2018) (cleaned up).

Perhaps recognizing their claims are hopelessly individualized, Plaintiffs attempt to gin up common questions. They allege that Amazon employs "common compensation-setting policies across its organizations." Compl. ¶¶ 22-23. But this is a conclusory assertion; Plaintiffs plead no facts to support their claim that Amazon's "compensation-setting" is the same across every business unit nationwide. The actual *facts* that Plaintiffs *do* cite concern only the individual *application* of Amazon's policies to *Plaintiffs*. For that reason, Plaintiffs fail to bridge the

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"conceptual gap between an individual's claim that he or she suffered an adverse action on discriminatory grounds and conclusory allegation regarding the existence of a policy of discrimination." *Kevari*, 2018 WL 6136822, at *7.

Plaintiffs also allege that common questions include "whether Amazon's policies or practices" "discriminate against Class Members" and "violate the EPOA," whether "Amazon's leveling policies and practices violate the WLAD and EPOA," and "whether equitable remedies, injunctive relief, compensatory damages, and punitive damages for the Class are warranted." Compl. ¶ 47. But these are *legal* questions that "any competently crafted class complaint" would raise, and that are "not sufficient." *Dukes*, 564 U.S. at 349 (questions like "Is that an unlawful employment practice? What remedies should we get?" cannot establish commonality); *see also Kevari*, 2018 WL 6136822, at *7 (striking class allegations where plaintiff's "alleged common questions of law are merely alleged legal violations phrased in the form of a question").

Ultimately, Plaintiffs' claims are nothing more than parochial individualized grievances based on their own experiences on a 14-person team, packaged as overbroad nationwide class claims. Under similar circumstances, courts have stricken class allegations at the pleading stage. *See, e.g.*, *Goins*, 2023 WL 3047388, at *14. The Court should do the same here.

4. Plaintiffs' Putative Damages Class Fails Rule 23's Predominance And Manageability Requirements.

Even if Plaintiffs' class allegations satisfied the commonality requirement (they do not), Plaintiffs' Rule 23(b)(3) damages class cannot proceed because Plaintiffs fail to plead facts sufficient to plausibly meet Rule 23(b)(3)'s predominance or manageability requirements.

"The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (cleaned up). The purpose of this inquiry is to test "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Duncan*, 203 F.R.D. at 611-12. Consistent with its purpose, the predominance

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criterion "is even more demanding than Rule 23(a)." *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013). Here, Plaintiffs' fail the predominance requirement for the same reasons they fail the commonality requirement. *See supra* at 11-13. Their claims on behalf of a nationwide class turn on specific experiences of individual employees and individual issues will "overwhelm questions common to the class," *Behrend*, 569 U.S. at 34.

Addressing the individualized issues across Plaintiffs' enormous putative class also would result in serious "difficulties in managing a class action," thereby violating Fed. R. Civ. P. 23(b)(3)(D). Adjudication of Plaintiffs' claims would require discovery and mini-trials for thousands of putative class members in different jobs, on different teams, in different business units, who worked in different states (and were subject to different state laws) to determine whether they suffered gender discrimination. The parties and the Court would need to assess, among other things, each class member's job duties, the propriety of her job classification, her treatment by individual supervisors and colleagues, and any comparators. Moreover, choice-of-law issues and differences in applicable state law would "compound the disparities among class members from the different states." *Zinser*, 253 F.3d at 1189 (cleaned up). This is not a feasible way for class litigation to proceed. *See, e.g.*, *Van v. Ford Motor Co.*, 332 F.R.D. 249, 290 (N.D. Ill. 2019).

B. The Court Should Strike Plaintiffs' Class And Collective Allegations With Respect To Their State-Law EPOA (Count II) and Federal EPA (Count III) Claims.

Plaintiff's EPOA class allegations—and federal EPA collective action allegations—also should be stricken because such claims are limited to employees within a single establishment; Plaintiffs have pled no "unusual circumstances" that would justify departure from the single-establishment rule; and Plaintiffs are not "similarly situated" to the collective members they seek to represent.

1. Plaintiffs' EPOA And EPA Claims Do Not Arise From The Same Establishment.

Plaintiffs cannot pursue a nationwide collective action under the EPA or a nationwide state-law class action under the EPOA because those statutes—absent unusual circumstances—only

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permit collective or class actions where the alleged discriminatory pay practices emanate from a single, physical establishment.

The EPA provides that "[n]o employer . . . shall discriminate, *within any establishment* in which such employees are employed, between employees on the basis of sex by paying wages to employees *in such establishment* at a rate less than the rate which he pays wages to employees of the opposite sex *in such establishment* for equal work." 29 U.S.C. § 206(d)(1) (emphases added).[5] The word "establishment" means "a distinct physical place of business rather than . . . an entire business or 'enterprise' which may include several separate places of business." 29 C.F.R. § 1620.9(a). "[F]ederal courts have consistently rejected the extension of the statutory establishment requirement to separate offices of an employer that are geographically and operationally distinct." *Foster v. Arcata Assocs., Inc.*, 772 F.2d 1453, 1464 (9th Cir. 1985), *overruled on other grounds*, *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262 (9th Cir. 1991). In other words, where "individual pay and promotion decisions [are] left to the discretion of local" leaders, different facilities of the same company do not qualify as a single "establishment" for purposes of the EPA. *Kassman v. KPMG LLP*, 416 F. Supp. 3d 252, 287 (S.D.N.Y. 2018); *see also Schindeler-Trachta, D.O. v. Tex. Health & Hum. Servs. Comm'n*, 2020 WL 1902576, at *7 (W.D. Tex. Feb. 26, 2020); *Price v. N. States Power Co.*, 2011 WL 338451, at *4 (D. Minn. Jan. 31, 2011).

In *Goins*, 2023 WL 3047388, at *1, the court considered whether the plaintiffs could represent a putative EPA collective, which included "supervisors, sorters, drivers, loaders, and associates located in California, Arkansas, Washington, and Nevada." The court found that the plaintiffs' EPA collective action and state-law class claims could not proceed "[b]ecause [the] plaintiffs [did] not allege violations within a single establishment." *Id.* at *6.

The same result is warranted here. Plaintiffs purport to bring collective action and state-law class claims emanating from as many as *613* potential "establishments"—including locations

[5] The EPOA is "analogous" to the federal EPA and is analyzed under the same standards. *See Dapper v. Brinderson, LLC*, 2023 WL 5177511, at *3 n.2 (W.D. Wash. Aug. 10, 2023); *see also Lavelle v. CL W. Mgmt. LLC, Inc.*, 2022 WL 10613342, at *7 (E.D. Wash. Oct. 18, 2022).

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as disparate as Amazon corporate headquarters in Virginia and an Amazon warehouse in New Jersey.[6] The employees at these locations do not even work in the same state, much less in the same "physical place of business." *See* 29 C.F.R. § 1620.9(a). Plaintiffs have not alleged facts to show that employees at all of these facilities worked "within a single establishment," as needed to bring a collective EPA claim or a class EPOA claim. *See Goins,* 2023 WL 3047388, at *6.

2. Plaintiffs Plead No Facts To Support An Exception To The Single Establishment Rule.

Nor do Plaintiffs allege any facts sufficient to support the "unusual circumstances" in which an "establishment" need not be limited to a "physical place of business." *See* 29 C.F.R. § 1620.9(b). Plaintiffs do not allege, for example, that there is "a central administrative unit" at Amazon that "hire[s] all employees, set[s] wages, and assign[s] the location of employment." *Id.* Quite the opposite: Plaintiffs allege it was their *individual*, *local* supervisors' conduct that led to them being placed in improper "job codes" and/or receiving purportedly unfair compensation within those codes. Plaintiffs allege that Wilmuth's supervisor "insisted" another employee "be placed in the lower-paid job category" when they were onboarding, Compl. ¶ 122, and that the "performance rating" given by Combs' and Schomer's "new supervisor[s]" would "negatively impact [their] compensation level for the next three years," *id.* ¶¶ 150, 154. These allegations underscore that the alleged misconduct occurred at the local level.

Plaintiffs also do not plead any of the other "unusual circumstances" that could justify departure from the "single establishment" rule. They do not allege that employees at Amazon "frequently interchange work locations" or that they have "virtually identical" job duties that are "performed under similar working conditions" across all locations. *See* 29 C.F.R. § 1620.9(b). Nor could they. Plaintiffs' proposed class and collective would include both a female lawyer working in Amazon HQ2 in Virginia as well as a female manager of an Amazon warehouse in

[6] *See* Amazon.com Form 10-K (2022), *available at* https://www.sec.gov/Archives/edgar/data/1018724/000101872423000004/amzn-20221231.htm (noting there are 611 Amazon facilities in the United States, along with two "headquarters"). The Court can take judicial notice of this report as a public filing. *See Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1235 (N.D. Cal. 2014).

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New Jersey, who do not have "virtually identical" duties performed "under similar working conditions." Plaintiffs' Complaint includes conclusory assertions that "Plaintiffs and other Collective Members" have "substantially similar job roles [and] functions," but there are no well-pled *facts* to support that naked assertion. Indeed, even Plaintiffs themselves have different job duties and performed them for different supervisors, with some Plaintiffs reporting to Lee, and others reporting to Wilmuth. *See, e.g.*, Compl. ¶¶ 68, 74. These differences are only multiplied across all female Amazon employees "in job levels 4-8" nationwide. *Id.* ¶ 33.

"Because [P]laintiffs do not allege violations within a single establishment," their EPOA and EPA claims should be stricken as to the collective. *See Goins*, 2023 WL 3047388, at *13.

3. The Members Of Plaintiffs' Putative EPA Collective Are Not Similarly Situated.

Under the EPA, a plaintiff may pursue collective claims only on behalf of those who are "similarly situated." 29 U.S.C. § 216(b). In considering whether members of a collective are similarly situated, courts assess whether they are "together the victims of a single decision, policy, or plan." *See Burk v. Contemp. Home Servs., Inc.*, 2007 WL 2220279, at *4 (W.D. Wash. Aug. 1, 2007) (cleaned up). "Plaintiffs cannot proceed in a collective action if the action relates to other specific circumstances personal to the plaintiff rather than any generally applicable policy or practice." *Hinojos v. Home Depot, Inc.*, 2006 WL 3712944, at *2 (D. Nev. Dec. 1, 2006).

Here, members of Plaintiffs' sprawling nationwide collective worked in different roles, performing different functions, in different business units, in different facilities and states, and reported to different supervisors. They do not plead facts to show that they were "together the victims of a single decision, policy, or plan." *Burk*, 2007 WL 2220279, at *3; *see also Beyer v. Michels Corp.*, 2022 WL 901524, at *9 (E.D. Wis. Mar. 28, 2022) (granting motion to strike collective allegations where the plaintiff did not allege "that there was a uniform policy").[7]

[7] Plaintiffs' inability to identify any relevant policy is particularly telling, given Wilmuth's "leadership role," which necessarily afforded her access to Amazon policies and procedures—including those regarding compensation. Compl. ¶¶ 126, 147.

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"Resolution of plaintiffs' claims would require individualized determinations, and would necessitate testimony from individual employees and their supervisors" about their job duties, their pay, their treatment, and the treatment of comparators. *Castle v. Wells Fargo Fin., Inc.*, 2008 WL 495705, at *5 (N.D. Cal. Feb. 20, 2008). "Because of the individualized inquiries involved . . . judicial economy would not be advanced by allowing this suit to proceed as a collective action." *Trinh v. JP Morgan Chase & Co.*, 2008 WL 1860161, at *5 (S.D. Cal. Apr. 22, 2008).

C. The Court Should Dismiss Plaintiffs' Family And Medical Leave Claims (Count VII) And Combs' Gender Discrimination And Equal Pay Claims (Counts I, II, III).

The Court also should dismiss Plaintiffs' individual FMLA and WPFMLA claims (Count VII) and Combs's gender discrimination and equal pay claims (Counts I, II, and III).

1. Plaintiffs Fail To State A Claim Under The FMLA Or The WPFMLA (Count VII).

In Count VII, Plaintiffs allege that Amazon violated the FMLA and WPFMLA by "continu[ing] to discriminate and retaliate against" them and by "fail[ing] to restore Plaintiff Combs to the same or equivalent position" "upon [Plaintiffs'] return from medical leave." Compl. ¶¶ 2, 146, 195-96. Plaintiffs fail to state a claim under either statute.

While the Complaint alleges that Plaintiffs suffered "retaliation" for taking medical leave, Plaintiffs appear to be asserting an interference claim rather than a retaliation claim. *See Sanders v. City of Newport*, 657 F.3d 772, 777 (9th Cir. 2011) (cleaned up). A plaintiff can bring an FMLA retaliation claim if she is "discharge[d] or in any other manner discriminate[d] against . . . for opposing any practice made unlawful" by the FMLA. 29 U.S.C. § 2615(a)(1)(2), (b). By contrast, a plaintiff can bring an FMLA interference claim if she maintains that her employer "interfere[d] with, restrain[ed], or den[ied] the exercise of or the attempt to exercise, any right provided" by the FMLA. 29 U.S.C. § 2615(a)(1). The WPFMLA "mirrors its federal counterpart." *Mooney v. Roller Bearing Co. of Am., Inc.*, 2022 WL 1014904, at *21 (W.D. Wash. Apr. 5, 2022).[8] "By their

[8] Effective January 1, 2020, the WPFMLA superseded the Washington Family Leave Act ("WFLA"), which previously provided employment protections for unpaid family and medical leave. Although the legislature repealed the WFLA, it "incorporated the employment protections provisions of [the WFLA] wholesale into the new

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plain meaning, the anti-retaliation . . . provisions [of the FMLA] do not cover visiting negative consequences on an employee simply because he has used FMLA leave." *Bachelder v. Am. W. Airlines, Inc.*, 259 F.3d 1112, 1124 (9th Cir. 2001). "Such action is, instead, covered under § 2615(a)(1), the provision governing 'Interference with the Exercise of rights.'" *Id.* (cleaned up). The same is true under the WPFMLA. *See Mooney*, 2022 WL 1014904, at *21.

Here, Plaintiffs allege that they "each took a medical leave of absence" and that, "[s]ince returning from their respective medical leaves, Amazon has continued to discriminate and retaliate against" them. Compl. ¶¶ 145-46. Plaintiffs' allegations relate to purported "negative consequences" of using leave, *Bachelder*, 259 F.3d at 1124, not retaliation for opposing alleged violations of the FMLA or WPFMLA. And while Wilmuth claims that she reported the supposed retaliation against her for taking leave, she does not allege that she suffered any negative consequences for *making that report*—only that "Amazon has done nothing with respect to Ms. Wilmuth's complaint." Compl. ¶ 149. Plaintiffs thus cannot state an FMLA or WPFMLA retaliation claim. *See, e.g.*, *Zentz v. Dentive-Fam. First Dental, LLC*, 2023 WL 4826748, at *3 (E.D. Wash. July 27, 2023); *Craft v. Burris*, 2017 WL 4891520, at *3 (D. Mont. Oct. 30, 2017).

Plaintiffs appear to be attempting to plead interference claims. However, to state a viable interference claim, each Plaintiff must allege that:

> (1) she was eligible for the [statute's] protections, (2) her employer was covered by the [statute], (3) she was entitled to leave under the [statute], (4) she provided sufficient notice of her intent to take leave, and (5) her employer denied her [statutory] benefits to which she was entitled.

Nguyen v. Boeing Co., 2016 WL 7375276, at *6 (W.D. Wash. Dec. 20, 2016) (cleaned up); *see also Dahlstrom v. Life Care Centers of Am., Inc.*, 2023 WL 4893491, at *5 (W.D. Wash. Aug. 1, 2023) (similar under WPFMLA).

Plaintiffs do not come close to pleading sufficient facts to state an interference claim. Plaintiffs do not plead that they requested or were granted FMLA or WPFMLA leave (as opposed

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[WPFMLA]." RCW 50A.05.125 c 59 § 2. Where appropriate, Amazon cites precedent interpreting and applying the WFLA's employment protections.

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to another form of medical leave). Nor do Plaintiffs allege facts to show that they satisfied either statute's eligibility requirements. Instead, the Complaint simply asserts that "Plaintiffs' mental and physical health suffered," and "each took a medical leave of absence." Compl. ¶¶ 145-46. Because the Complaint fails to adequately allege that Plaintiffs were eligible for, requested, or took leave under the FMLA or WPFMLA, Plaintiffs' FMLA and WPFMLA claims must be dismissed. *See, e.g.*, *Reyes v. Fircrest Sch.*, 2012 WL 5878243, at *2 (W.D. Wash. Nov. 21, 2012); *Dahlstrom*, 2023 WL 4893491, at *5; *Lee v. Delta Air Lines Inc.*, 2021 WL 4527955, at *10 (C.D. Cal. Aug. 23, 2021); *Craft*, 2017 WL 4891520, at *4.

2. Combs Fails To State Discrimination (Count I) And Equal Pay Claims (Counts II-III).

Combs asserts gender discrimination claims under: (1) the WLAD (Count I); (2) the EPOA (Count II); and (3) the EPA (Count III). Each should be dismissed.

a. Combs Fails To State A WLAD Claim (Count I).

The WLAD prohibits discrimination "against any person in compensation or in other terms or conditions of employment" based on sex. RCW 49.60.180(3). To succeed on a WLAD disparate treatment claim, a plaintiff must plead that she: (1) belonged to a protected class; (2) suffered an adverse employment action; (3) was doing satisfactory work; and (4) was treated differently than someone not in the protected class. *Dahlstrom*, 2023 WL 4893491, at *6; *see also Marquis v. City of Spokane*, 922 P.2d 43, 52 (Wash. 1996). Here, Combs alleges that she was subjected to discriminatory treatment in four ways. Compl. ¶¶ 80-91.[9] None are sufficient.

First, Combs claims that Burke took credit for her work and left her name off of research papers circulated to Amazon stakeholders. Compl. ¶¶ 82-85. But taking credit for another employee's work is not an adverse employment action under the WLAD. *See Kirby v. City of Tacoma*, 98 P.3d 827, 833 (Wash. Ct. App. 2004). And, even if it were, Combs has not alleged

[9] The Complaint also suggests in passing that Combs was discriminated against on the basis of "compensation." Compl. ¶ 166. To the extent Combs attempts to plead a compensation claim under the WLAD, it fails for the same reason as her EPOA claim—namely, she fails to identify a male employee who allegedly performed substantially equal work for more pay. *See infra* at 22-23; *see also Nguyen*, 2016 WL 7375276, at *3.

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that any similarly situated male employee was treated differently—*i.e.*, that an identified male *did* receive credit for work circulated to Amazon stakeholders or that Burke never took credit for the work of male employees. Combs therefore fails to plausibly allege that Burke took credit for her work because of her gender. *See, e.g.*, *Nguyen*, 2016 WL 7375276, at *3.

Second, Combs cites as supposed evidence of a WLAD violation the fact that Burke allegedly tried to assign her "HQ1" project to a member of his team, Rob Wilson. Compl. ¶ 85. But the Complaint does not allege that Burke's attempt to assign the HQ1 project ever materialized, and a mere threat—especially one that just relates to a single assignment—is not an actionable adverse employment action. *See, e.g.*, *Kirby*, 98 P.3d at 833; *Hellman v. Weisberg*, 360 F. App'x 776, 779 (9th Cir. 2009).

Third, Combs alleges that she was demoted twice: once in December 2022 after Wilmuth's team was reorganized and again when she returned from leave in July 2023. Compl. ¶¶ 138-141, 157-158. But these allegations cannot support a WLAD claim because Combs identifies no male who was similarly situated to her "in all relevant aspects" and treated more favorably. *Perez-Melgosa v. State*, 195 Wash. App. 1041 (Wash Ct. App. Aug. 15, 2016). She does not identify any comparator at all with respect to the alleged July 2023 demotion. And while she alleges that Mishra "had his role, team, and compensation remain the same or even increase[]" in connection with the December 2022 reorganization, Compl. ¶ 138, she essentially admits that Mishra is not similar to her—Mishra was a Research Scientist, while Combs had "no background in research." *Id.* ¶¶ 69, 158. Further, Combs alleges that she was demoted in December 2022 and lost job assignments in retaliation for "raising concerns" about Burke's treatment and the reorganization of Wilmuth's team. In other words, she claims this demotion amounted to retaliation for making complaints—not gender discrimination. Likewise, Combs claims that she was demoted again in July 2023 because she took leave—another reason having nothing to do with her gender. *Id.* ¶¶ 134, 136, 143, 157. Because Combs fails to allege that either purported demotion was related

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to her gender, neither demotion can support a WLAD discrimination claim. *See, e.g.*, *Pratt v. Wal-Mart Stores, Inc.*, 2013 WL 4734805, at *2 (W.D. Wash. Sept. 3, 2013).

Finally, Combs alleges that Burke and one of his male subordinates, Wilson, "repeatedly talked over and down to [her] in an insulting manner." Compl. ¶¶ 85, 111. But the "WLAD is not intended as a general civility code . . . and not everything that makes an employee unhappy is an actionable adverse action." *Alonso v. Qwest Comms. Co.*, 315 P.3d 610, 617 (Wash. Ct. App. 2013). While Burke's or Wilson's comments, if made, are arguably unpleasant, they do not constitute adverse actions, nor has Combs alleged that they were sufficiently severe or pervasive to rise to the level of a hostile work environment. *See Strange v. Les Schwab Tire Ctrs. Of Or., Inc.*, 2009 WL 2913892, at *4 (W.D. Wash. Sept. 8, 2009); *Hardage v. CBS Broad., Inc.*, 427 F.3d 1177, 1189 (9th Cir. 2005). The Court therefore should dismiss Combs's WLAD claim.

b. Combs Fails To State An EPA Or EPOA Claim (Counts II-III).

Combs also fails to state a claim under the EPA or EPOA. To plausibly plead an EPA claim, an employee must set forth facts to suggest that "the employer pays different wages to employees of the opposite sex for substantially equal work." *Rizo v. Yovino*, 950 F.3d 1217, 1222 (9th Cir. 2020) (en banc); *see McMinimee v. Yakima Sch. Dist. No. 7*, 2019 WL 11680199, at *13 (E.D. Wash. Aug. 7, 2019). The EPOA is "virtually identical" to the EPA. *Hudon v. W. Valley Sch. Dist.*, 97 P.3d 39, 43 (Wash. Ct. App. 2004).

Courts routinely dismiss EPA and EPOA claims where a plaintiff fails to identify an employee of the opposite gender who is allegedly paid more for substantially equal work. *See, e.g.*, *West v. Spencer*, 2018 WL 1757138, at *2 (W.D. Wash. Apr. 12, 2018); *Redwind v. W. Union, LLC*, 2019 WL 3069864, at *4 (D. Or. June 21, 2019) (same), *R&R adopted*, 2019 WL 3069841 (D. Or. July 12, 2019); *Alexander v. Marriott Intern., Inc.*, 2011 WL 1231029, at *5 (D. Md. Mar. 29, 2011) (same).

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Here, Combs has failed to name a single male employee who she claims was paid more than she was for performing substantially equal work. The Complaint contains only two sentences in support of Combs's EPA and EPOA claims:

> Upon information and belief, Amazon was also paying Ms. Combs less than her male peers. Ms. Combs was paid at the very low end of the pay band for her role, while males who had the same job code were being paid more, including males who had substantially less experience than Ms. Combs.

Compl. ¶ 79. These allegations are nothing more than "formulaic recitations" of the elements of the EPA and EPOA "couched as a factual allegation." *Twombly*, 550 U.S. at 555 (cleaned up). "Threadbare and conclusory allegations that an employer favors a particular group are insufficient to satisfy" the requirement of identifying a comparator. *Nguyen v. The Boeing Co.*, 2016 WL 2855357, at *3 (W.D. Wash. May 16, 2016). Indeed, the Complaint's threadbare allegation that Combs was "paid at the very low end of the pay band for her role" in no way suggests that only men were placed higher than she was on the pay band; instead, the allegation just as plausibly suggests that comparable *women* in the same pay band were paid more than Combs was. Because Combs has not identified any male employee who she claims was paid more than her for performing substantially equal work, her EPA and EPOA claims merit dismissal.

V. CONCLUSION

For all the reasons described above, the Court should strike Plaintiffs' class and collective action allegations; dismiss Count VII in its entirety; and dismiss Counts I, II, and III as to Combs.

LOCAL CIVIL RULE 7(e)(6) CERTIFICATION

I certify that this memorandum contains 8,396 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on January 19, 2024, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court's Electronic Mail Notice List.

Dated: January 19, 2024

s/ Erin Koehler
Legal Practice Assistant

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